

ESTTA Tracking number: **ESTTA344889**

Filing date: **04/29/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Crossroads Productions LLC
Granted to Date of previous extension	05/02/2010
Address	2777 Loker Avenue West, Suite A Carlsbad, CA 92010 UNITED STATES
Attorney information	Victoria Newland Law Offices of Victoria Newland, APC 3460 Marron Road, Suite 103-356 Oceanside, CA 92056 UNITED STATES victoria@vnewlandlaw.com Phone:760-216-6440

Applicant Information

Application No	77764452	Publication date	11/03/2009
Opposition Filing Date	04/29/2010	Opposition Period Ends	05/02/2010
Applicant	Moody II, Ben Robert #2100 GSO Business Mgmt 15260 Ventura Blvd. Sherman Oaks, CA 91403 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. All goods and services in the class are opposed, namely: Clothing, namely, shirts, T-shirts, under shirts, night shirts, polo shirts, pants, trousers, shorts, boxer shorts, tops, crop tops, tank tops, halter tops, sweat shirts, sweat shorts, sweat pants, capes, caps, beanies, hats, headbands, wrist bands, sweat bands, headwear, scarves, bandanas, sarongs, leg warmers, hosiery, pantyhose, body stockings, knee highs, leggings, tights, gloves, mittens, footwear, shoes, sneakers

Grounds for Opposition


Priority and likelihood of confusion	Trademark Act section 2(d)
--------------------------------------	----------------------------

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2915276	Application Date	07/01/2003
Registration Date	12/28/2004	Foreign Priority Date	NONE

Word Mark	FALLEN
Design Mark	
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 2003/02/06 First Use In Commerce: 2003/11/15 clothing, headwear and footwear, namely, shirts, sweatshirts, pants, [sweat bands, shorts,] jackets, sweaters, hats, caps, socks, belts, shoes

U.S. Registration No.	2968468	Application Date	07/01/2003
Registration Date	07/12/2005	Foreign Priority Date	NONE
Word Mark	FALLEN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 018. First use: First Use: 2003/11/07 First Use In Commerce: 2003/11/07 backpacks, and all purpose sports and athletic bags		

U.S. Registration No.	3001572	Application Date	07/30/2004
Registration Date	09/27/2005	Foreign Priority Date	NONE
Word Mark	RISE WITH THE FALLEN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2003/09/15 First Use In Commerce: 2003/11/15 clothing, headwear and footwear, namely, shirts, sweatshirts, pants, sweat bands, shorts, jackets, sweaters, hats, caps, socks, belts, gloves, shoes		

Attachments	78459477#TMSN.jpeg (1 page)(bytes) Notice.Opp.WEARETHEFALLEN.ic 25.PDF (5 pages)(63736 bytes)
-------------	---

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Victoria Newland/
Name	Victoria Newland
Date	04/29/2010

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

CROSSROADS PRODUCTIONS LLC)	Application No. 77/764,452
)	
Opposer,)	
)	
v.)	
)	
Ben Robert Moody III)	
)	
Applicant.)	
_____)	

NOTICE OF OPPOSITION

BOX TTAB FEE
Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Sir or Madam:

Crossroads Productions LLC (“Opposer”), a California limited liability company with a business address of 2777 Loker Avenue West, Carlsbad, California 92010, believes that it will be damaged by registration of the mark WE ARE THE FALLEN that is the subject of Application Serial No. 77/764,452, published in the *Official Gazette* on November 3, 2009, and requests that registration to Ben Robert Moody III (“Applicant”) be refused. A description of Applicant’s trademark application is as follows:

MARK: WE ARE THE FALLEN

SERIAL NO.: 77/764,452

FILED: June 19, 2009

TYPE: Intent to Use

PUBLISHED: November 3, 2009

CLASS OPPOSED: 25

GOODS OPPOSED: Clothing, namely, shirts, t-shirts, under shirts, night shirts, polo shirts, pants, trousers, shorts, boxer shorts, tops, crop tops, tank tops, halter tops, sweat shirts, sweat shorts, sweat pants, capes, caps, beanies, hats, headbands, wrist bands, sweat bands, headwear, scarves, bandanas, sarongs, leg warmers, hosiery, pantyhose, body stockings, knee highs, leggings, tights, gloves, mittens, footwear, shoes, and sneakers.

As grounds for opposition, Opposer alleges as follows:

1. Long prior to the filing date of Applicant's application for WE ARE THE FALLEN, Opposer has been engaged in the manufacture and sale of clothing, headwear, footwear, and accessories under its marks FALLEN and RISE WITH T FALLEN. Opposer has used the marks FALLEN and RISE WITH THE FALLEN in connection with its goods in interstate commerce since at least as early as November 2003, well prior to the acts of Applicant.

2. Opposer is the owner of Registration No. 2,915,276 for the mark FALLEN, issued on December 28, 2004, for clothing, headwear and footwear, namely, shirts, sweatshirts, pants, jackets, sweaters, hats, caps, socks, belts, and shoes. Such registration is valid, subsisting, incontestable, un-revoked, and un-canceled.

3. Opposer is also the owner of Registration No. 2,968,468 for the mark FALLEN, issued on July 12, 2005, for backpacks, and all purpose sports and athletic bags. Such registration is valid, subsisting, un-revoked, and un-canceled.

4. Opposer is additionally the owner of Registration No. 3,001,572 for the mark RISE WITH THE FALLEN, issued on September 27, 2005, for clothing, headwear and

footwear, namely, shirts, sweatshirts, pants, sweat bands, shorts, jackets, sweaters, hats, caps, socks, belts, gloves, and shoes. Such registration is valid, subsisting, un-revoked, and un-canceled.

5. There is no issue as to priority. The Applicant's intent to use application was filed subsequently to Opposer's applications being filed and subsequent to Opposer's date of first use of its marks FALLEN and RISE WITH THE FALLEN.

6. Opposer has sold its goods listed in the aforesaid registrations under the aforesaid marks throughout the United States and extensively internationally, and has developed valuable goodwill in such marks. Due to Opposer's efforts, the expenditure of considerable sums for promotional activities, and due to the high quality of its goods, Opposer has gained a valuable reputation in its marks.

7. The mark proposed for registration by the Applicant, namely WE ARE THE FALLEN, incorporates all of Opposer's mark FALLEN and a significant portion of Opposer's mark RISE WITH THE FALLEN. Furthermore, Applicant's mark is applied to goods that are either identical or very closely related to those goods listed in Opposer's registrations.

8. As such, Applicant's mark so nearly resembles Opposer's marks as to be likely to create confusion, deception and mistake as to the source or sponsorship of those goods. Any such confusion in trade could result in loss of sales to Opposer, and any defect or fault found with Applicant's goods marketed under its mark could detrimentally reflect upon Opposer and injure the goodwill established in its marks.

WHEREFORE, Opposer prays that the opposition be sustained and that registration for the mark WE ARE THE FALLEN, Serial No. 77/764,452 be refused.

Respectfully submitted,

CROSSROADS PRODUCTIONS LLC

/Victoria Newland/

Dated: April 29, 2010

By: _____
Attorney for Crossroads Productions LLC
Victoria Newland
Law Offices of Victoria Newland, APC
3460 Marron Road, Suite 103-356
Oceanside, CA 92056
Tel: (760) 216-6440
Fax: (760) 859-3208

I hereby certify that this correspondence and all marked attachments are being electronically filed with the Trademark Trial and Appeal Board through its website located at <http://estta.uspto.gov> on April 29, 2010.

Date: April 29, 2010

/Victoria Newland/
By: _____
Victoria Newland
Law Offices of Victoria Newland, APC
Attorney for Crossroads Productions LLC

CERTIFICATE OF SERVICE

This is to certify that on this 29th day of April 2010, a copy of the foregoing “Notice of Opposition” was mailed by First Class mail, postage prepaid to:

Brendon T. Vandergast, Esq.
Altschul & Olin, LLP
16133 Ventura Blvd., Suite 1270
Encino, CA 91436-2403

/Victoria Newland/

Victoria Newland